

*1 Office of the Attorney General
State of Washington

AGO 1982 No. 9
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CRIMES--COURTS--COUNTIES--CITIES AND TOWNS--PENALTY ASSESSMENTS FOR CRIME VICTIMS'
COMPENSATION

(1) Under the provisions of § 6, chapter 8, Laws of 1982, 1st Ex. Sess., the Administrator for the Courts is required, in 1983, to compile a report covering crime victims' compensation penalty assessments paid, or due, during calendar year 1982.

(2) A crime victims' compensation penalty assessment is to be paid pursuant to [RCW 7.68.035\(3\)](#), as amended by chapter 8, Laws of 1982, 1st Ex. Sess., upon forfeiture of bail where the offense with which the defendant was charged is either (a) a crime defined by state law which is punishable, thereunder, as a felony or a gross misdemeanor, or (b) a crime defined by a city ordinance which is punishable thereunder as a gross misdemeanor and which, in addition, covers conduct which is the same, or substantially the same, as conduct which is defined to be criminal by state law.

(3) A crime victims' compensation penalty assessment is to be imposed under [RCW 7.68.035\(1\)](#), as amended, when an accused individual is found guilty of having committed any crime defined by either a state statute or a county or city ordinance, including ordinary misdemeanors, with the exception of those motor vehicle crimes expressly referred to in subsection (2) of the statute, whether defined by state statute or by a substantially similar municipal ordinance.

(4) The penalty assessment provided for by [RCW 7.68.035\(1\)](#), as amended, is applicable in the case of a conviction, on or after March 27, 1982, of a crime committed prior to the date.

(5) If a person is found guilty of a number of separate counts contained in the same criminal information, each of which represents a separate and distinct crime, a penalty assessment is to be imposed under [RCW 7.68.035\(1\)](#), as amended, on the basis of each such count.

(6) A crime victims' compensation penalty assessment is not to be imposed, under [RCW 7.68.035](#), as amended, on an alleged juvenile offender who has undergone diversion proceedings pursuant to chapter 13.40 RCW.

Mr. James R. Larsen
Acting Administrator for the Courts
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Olympia, Washington 98504

Dear Sir:

By letter previously acknowledged you requested our opinion on several questions relating to the funding of crime victims' compensation under chapter 8, Laws of 1982, 1st Ex. Sess. We paraphrase your questions as follows:

(1) Under the provisions of § 6, chapter 8, Laws of 1982, 1st Ex. Sess., is the administrator for the courts required, in 1983, to compile a report for calendar year 1982?

(2) Is a penalty assessment to be imposed under [RCW 7.68.035\(3\)](#), as amended, upon forfeiture of bail, where the offense with which the defendant was charged is based on a county or city ordinance rather than a state statute?

(3) Is a person to be deemed to have been found guilty of having committed a crime, under [RCW 7.68.035\(1\)](#) as amended by § 1, chapter 8, supra, upon being convicted of:

- *2 (a) A "crime" as defined in [RCW 9A.04.040\(1\)](#);
- (b) An offense in violation of state law for which only a monetary penalty, and not a sentence of imprisonment, may be imposed;
- (c) A misdemeanor or gross misdemeanor in violation of a county or city ordinance which has some state statutory counterpart;
- (d) A gross misdemeanor or misdemeanor in violation of a county or city ordinance which has no state statutory counterpart?
- (4) Does the penalty assessment provided for by [RCW 7.68.035\(1\)](#), as amended, apply in the case of a conviction, on or after March 27, 1982, of a crime committed prior to that date?
- (5) If a person is found guilty of a number of separate counts contained in the same criminal information, each of which represents a separate and distinct crime, is a penalty assessment to be imposed under [RCW 7.68.035\(1\)](#), as amended, on the basis of each such count?
- (6) In view of [RCW 7.68.035\(7\)](#), is the subject penalty assessment to be imposed on an alleged juvenile offender who has undergone diversion proceedings pursuant to chapter 13.40 RCW?

We answer questions (1), (4) and (5) in the affirmative, question (6) in the negative, and questions (2) and (3) in the manner set forth in our analysis.

ANALYSIS

Question (1):

Chapter 8, Laws of 1982, 1st Ex. Sess., contains a number of further revisions of a prior law [\[FN1\]](#) which provides for the payment of compensation to the victims of certain crimes. Your first question involves § 6 of the act which adds the following new section to chapter 2.56 RCW relating to the administrator for the courts:

"Beginning in 1983, the administrator for the courts shall annually compile a report, covering the previous year, showing: (1) For each superior court district, the number of convictions and the amount of assessments paid and amount due for felonies, gross misdemeanors, and misdemeanors; (2) for each county, the number of gross misdemeanor and misdemeanor convictions in courts of limited jurisdiction and the amount of assessments paid and the amount due. This information shall be provided by class of crime (felony, gross misdemeanor, and misdemeanor). 'Assessment' means the crime victims compensation assessment required under [RCW 7.68.035](#)."

You ask:

Under the provisions of § 6, chapter 8, Laws of 1982, 1st Ex. Sess., is the administrator for the courts required, in 1983, to compile a report for calendar year 1982?

We believe that this question is answerable in the affirmative. By its express terms the cited section requires the administrator for the courts to compile an annual report in 1983, and each year thereafter, covering the previous year. Thus, the first such report will be prepared in 1983, covering the previous year which, of course, is 1982.

Question (2):

This next question, repeated for ease of reference, asks:

Is a penalty assessment to be imposed under [RCW 7.68.035\(3\)](#), as amended, upon forfeiture of bail, where the offense with which the defendant was charged is based on a county or city ordinance rather than a state statute?

*3 Set forth in bill form for ease of reference, [RCW 7.68.035\(3\)](#), as amended by § 1, chapter 8, Laws of 1982, 1st Ex. Sess., reads as follows:

"(3) Whenever any person accused of having committed a criminal act (()), posts bail pursuant to the provisions of chapter 10.19 RCW, and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment (()), in addition to any other penalty of fine imposed by law, equal to

the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the criminal act."

In turn, the phrase "criminal act" is an expressly defined term for the purposes of the crime victims' compensation law. Specifically, it is defined by [RCW 7.68.020\(2\)](#), which was not amended by chapter 8, supra, to mean (with certain exceptions),

". . . an act committed or attempted in this state which is punishable as a felony or gross misdemeanor under the laws of this state: . . ." (Emphasis supplied)

Two separate points must be noted in connection with this definition. First, it only covers those acts which are punishable as felonies or gross misdemeanors--as distinguished from ordinary misdemeanors. And, with that in mind, we note the following classification of crimes in [RCW 9A.04.040](#):

"(1) An offense defined by this title or by any other statute of this state, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, gross misdemeanors, or misdemeanors.

"(2) A crime is a felony if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for a term in excess of one year. A crime is a misdemeanor if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for no more than ninety days. Every other crime is a gross misdemeanor."

Second, the above definition of "criminal act" uses the language ". . . under the laws of this state . . ." However, in [State ex rel. Ralston v. Dept. of Licensing, 60 Wn.2d 535, 374 P.2d 571 \(1962\)](#), the Court (albeit in a different context) construed the term "laws of this state" to include county or city ordinances--at least those defining, as criminal, conduct which is also violative of an identically or similarly worded state statute. We accept the reasoning of that case for present purposes.

Bearing these two points in mind we next note, nevertheless, that neither a county nor a city is presently authorized to create, or establish, a felony. In addition, counties may not establish, or create, a gross misdemeanor since, by virtue of [RCW 36.32.120\(7\)](#), any violation of a county criminal ordinance is an ordinary misdemeanor only.

*4 On the other hand, utilizing the definition of a "gross misdemeanor" which appears in [RCW 9A.04.040](#), supra, (i.e., a crime for which a person may be sentenced to confinement for more than ninety days but not in excess of one year), we find that in the case of cities there is authority to enact ordinances creating, or establishing, gross misdemeanors. See, e.g., [RCW 35.22.280\(35\)](#) which authorizes first-class cities to impose fines of \$500 or imprisonment in the city jail for six months or both; [RCW 35.23.440\(30\)](#) which is of the same effect for second-class cities; [RCW 35.24.290\(12\)](#) which grants the same authority to third-class cities; and [RCW 35.27.370\(14\)](#) which does likewise for fourth-class cities. And finally, in the case of code cities, we note, quite simply, the following language of [RCW 35A.11.020](#):

". . . The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. . . ."

Therefore, we believe it proper to read the definition of "criminal act," supra, for the purposes of [RCW 7.68.035\(3\)](#), as amended, to include:

(a) all crimes defined by a state law which are punishable, thereunder, as felonies or gross misdemeanors; and

(b) those crimes defined by a city ordinance which are punishable thereunder as gross misdemeanors and which, in addition, cover conduct which is the same, or substantially the same, as conduct which is defined to be criminal by state law.

In the case of bail forfeitures that are related to those classes of crimes, the provisions of [RCW 7.68.035\(3\)](#), supra, will apply so as to require imposition of the prescribed penalty assessment. Otherwise, however, [RCW 7.68.035\(3\)](#), as amended,

does not apply to county or municipal ordinance violations.

Question (3):

But what if the accused person is thereafter [\[FN2\]](#) actually found guilty of the crime with which he has been charged? In that case, the applicable statutory language, as set forth in subsections (1) and (2) of [RCW 7.68.035](#), as amended by chapter 8, Laws of 1982, supra, reads as follows:

"(1) Whenever any person is found guilty in any court of competent jurisdiction of having committed (()) a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment (()) of fifty dollars for a felony or gross misdemeanor and twenty-five dollars for a misdemeanor. The assessment shall be in addition to any other penalty or fine imposed by law.

*5 "(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: [RCW 46.61.520](#), [46.61.024](#), [46.52.090](#), [46.70.140](#), [46.65.090](#), [46.61.502](#), [46.61.504](#), [46.52.100](#), [46.20.410](#), [46.52.020](#), [46.10.130](#), [46.09.130](#), [46.61.525](#), [46.61.685](#), [46.61.530](#), [46.61.500](#), [46.61.015](#), [46.52.010](#), [46.44.180](#), [46.10.090\(2\)](#) and [46.09.120\(2\)](#)."

Are the words "a crime," for the purposes of subsection (1), supra, to be given a broader meaning than the expressly defined term "criminal act" so as to also encompass ordinary misdemeanors at the state level as well as city or county ordinance violations? That, it will be seen, is the primary issue raised by your third question which reads as follows:

Is a person to be deemed to have been found guilty of having committed a crime, under [RCW 70.68.035\(1\)](#) as amended by § 1, chapter 8, supra, upon being convicted of:

- (a) A "crime" as defined in [RCW 9A.04.040\(1\)](#);
- (b) An offense in violation of state law for which only a monetary penalty, and not a sentence of imprisonment, may be imposed;
- (c) A misdemeanor or gross misdemeanor in violation of a county or city ordinance which has some state statutory counterpart;
- (d) A gross misdemeanor or misdemeanor in violation of a county or city ordinance which has no state statutory counterpart?

And, notably, an unqualified affirmative response to any of the four subparts of this question, including (a), would mean that, indeed, a "crime" under subsection (1) is broader than a "criminal act" under subsection (3). For even the definition in [RCW 9A.04.040\(1\)](#), which is a part of the new (1975) state criminal code, picks up ordinary as well as gross misdemeanors--as follows:

"An offense defined by this title or by any other statute of this state, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, gross misdemeanors, or misdemeanors." (Emphasis supplied.)

Our first clue to an answer will be found in the following language of [RCW 7.68.035\(4\)](#) as also amended by § 1, chapter 8, supra:

"Notwithstanding any other provision of law, such penalty assessment shall be paid by the clerk of the court to the city or county treasurer, as the case may be, who shall monthly transmit eighty percent of such penalty assessments to the state treasurer. . . ." (Emphasis supplied.)

Interestingly, the underscored language in this instance was actually in the statute before adoption of the 1982 amendments, having originated as part of § 10, chapter 302, Laws of 1977, 1st Ex. Sess. Its purpose was then somewhat puzzling, however, since the penalty assessment apparently then only applied to state crimes in accordance with the pre-1982 version of [RCW 7.68.035\(1\)](#) which read as follows:

"(1) Whenever any person is found guilty in any court of competent jurisdiction of having committed an act prohibited under the provisions of Title 9A RCW as now or hereafter amended, which act involved a victim and is punishable as a felony or gross misdemeanor, there shall be imposed by the court upon such convicted person a penalty assessment in the amount of twenty-five dollars or ten percent of any other penalty or fine, whichever is greater, which penalty assessment shall be in addition

to any other penalty or fine imposed by law." (Emphasis supplied)

*6 How, then, would a city treasurer, presumably receiving payments from a municipal police court--which only has jurisdiction over city ordinance violations [\[FN3\]](#) --have been involved? But now, by reading the amended version of [RCW 7.68.035\(1\)](#) as extending to all crimes including gross misdemeanors or misdemeanors in violation of city ordinances, this previously incongruous language obtains a meaning and purpose.

Moreover, and perhaps even more importantly, it is impossible to overlook the fact that the 1982 legislature, in amending [RCW 7.68.035\(1\)](#), chose not here to use its own previously defined term "criminal act." [\[FN4\]](#) Instead, it simply spoke of the commission of "a crime." Presumably, the legislature was aware of that previously defined term. And thus, it would seem, it must be deemed to have deliberately chosen not to use it for the purposes of subsection (1) of the statute--as distinguished (for some reason which, admittedly, is not entirely clear) from the purposes of the bail forfeiture situation under what is now [RCW 7.68.035\(3\)](#).

In sum, given the foregoing, we are unable to find any legitimate basis for limiting the provisions of [RCW 7.68.035\(1\)](#), as amended, to state (as distinguished from county or municipal) crimes. Therefore, notwithstanding our more limited answer to your second question, we do answer question (3) generally in the affirmative. The only exceptions to this conclusion (i.e., that [RCW 7.68.035\(1\)](#) applies to all crimes) are those expressly stated in subsection (2) of the statute, as amended, relating to certain motor vehicle crimes--whether defined by state statute or by a substantially similar municipal ordinance. [\[FN5\]](#)

Question (4):

By this next question you have asked:

Does the penalty assessment provided for by [RCW 7.68.035\(1\)](#), as amended, apply in the case of a conviction, on or after March 27, 1982, of a crime committed prior to that date?

We answer this inquiry in the affirmative. The operative event, under amended [RCW 7.68.035\(1\)](#), supra, remains (as before) a conviction or finding of guilt. It matters not when the crime itself was committed.

We are aware, in so concluding, of an argument to the effect that such a reading of the law would make it an ex post facto law in violation of the Constitution. [\[FN6\]](#) An ex post facto law, however, is one which changes the punishment and inflicts greater punishment than the law annexed to the particular crime when it was committed. [State v. Cunningham, 23 Wn.App. 826, 857, 598 P.2d 756 \(1979\)](#) and authorities cited therein. Here, on the other hand, the subject penalty assessment does not relate to, or increase the prescribed punishment for, any particular crime. [\[FN7\]](#) Rather, as above indicated, it applies "across the board," so to speak, to all persons who are found guilty of "a crime." Moreover, it is not imposed as punishment upon the defendant because of the nature of his offense. We therefore do not believe that our literal reading, and application, of [RCW 7.68.035](#) as amended--to the end that we answer your fourth question in the affirmative--would be held by the Court to be a violation of the ex post facto doctrine.

*7 Question (5):

Your fifth question, repeated for ease of reference, inquires as follows:

If a person is found guilty of a number of separate counts contained in the same criminal information, each of which represents a separate and distinct crime, is a penalty assessment to be imposed under [RCW 7.68.035\(1\)](#), as amended, on the basis of each such count?

The argument, as we understand it, in support of a negative answer to this question is that the statute envisions imposition of the assessment on persons who have the status of being convicted--with the amount being determined by the seriousness rather than the number of crime(s). See, again, the language of [RCW](#)

[7.68.035\(1\)](#), as amended, with emphasis as below indicated:

"Whenever any person is found guilty in any court of competent jurisdiction of having committed a crime . . . there shall be imposed by the court upon such convicted person a penalty assessment of fifty dollars for a felony or gross misdemeanor and twenty-five dollars for a misdemeanor. The assessment shall be in addition to any other penalty or fine imposed by law." (Emphasis supplied.)

But, as we read the statute, the penalty attaches, "[w]henever any person is found guilty . . . of having committed a crime. . ." (Emphasis supplied). Since it is the guilty finding which creates liability for the penalty, it therefore appears to us that the legislature meant for a separate penalty to be imposed with respect to each such finding--even if several such findings of guilt are made with respect to the same person in the same proceeding. Accordingly, we answer question (5) in the affirmative.

Moreover, in further support of that answer, we note that if the person has been convicted of more than one class crime, even though charged in a single information, the statute goes on to provide for a different penalty assessment for those classes of crimes. What if, for example, a person was charged, in the same information, with two separate crimes, one constituting a gross misdemeanor and the other an ordinary misdemeanor--and was convicted of both? If only a single penalty assessment is to be imposed, should it be a fifty dollar assessment or a twenty-five dollar assessment. Or, instead, does not ordinary logic tell us that it should be a seventy-five dollar assessment--just as if the two crimes had been charged separately.

Finally, we have not overlooked the fact that the above-quoted statutory language is couched in singular, rather than plural, terms. It speaks of a crime, a penalty assessment, and, lastly, the assessment. In our opinion, however, for such linguistic style on the part of the legislature to be used as a means of establishing legislative intent regarding the scope of a statute such as this would be, quite simply, to overlook one of the legislature's own, statutorily enacted, rules of construction. We have reference, specifically, to [RCW 1.12.050](#) which is among the statutory rules of construction codified in chapter 1.12 RCW and reads as follows:

***8** "Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the masculine gender may be extended to females also."

Question (6):

Your final question arises by reason of what is now subsection (7) of [RCW 7.68.035](#) as amended by § 1, chapter 8, supra. That subsection reads as follows:

"Penalty assessments under this section shall also be imposed in juvenile offense dispositions under Title 13 RCW."

Your question is whether, in view of this provision, the subject penalty assessment is to be imposed on an alleged juvenile offender who has undergone diversion proceedings pursuant to chapter 13.40 RCW. And our answer to this question, in turn, is in the negative.

Under the provisions of [RCW 13.40.080](#), a juvenile accused of an offense who agrees to diversion in the manner provided for therein, and who fulfills the terms of the resulting diversion agreement, is, as a consequence, not prosecuted--much less convicted or found guilty. By its use of the phrase "juvenile offense dispositions," however, we believe that the legislature only intended to reach those dispositions which are analogous to criminal convictions. Moreover, under [RCW 13.40.130](#), we note that the word "disposition" is repeatedly used only in the context of a juvenile respondent who had pleaded, or been found, guilty of the subject offense(s). [\[FN8\]](#)

This completes our consideration of your questions. We trust that the foregoing will be of assistance to you.

Very truly yours,

Kenneth O. Eikenberry

Attorney General

Philip H. Austin

Deputy Attorney General

[FN1] Chapter 122, Laws of 1973, 1st Ex. Sess., as previously amended by chapter 176, Laws of 1975, 1st Ex. Sess., chapter 302, Laws of 1977, 1st Ex. Sess., and chapter 156, Laws of 1980--and now codified in chapter 7.68 RCW.

[FN2] Either with or without a prior bail forfeiture.

[FN3] See, [RCW 35.20.030](#) (cities over 4,000 in population); [RCW 35.22.460](#) (first-class cities); [RCW 35.23.600](#) (second-class cities); [RCW 35.24.460](#) (third-class cities); [RCW 35.27.530](#) (towns) and [RCW 35A.20.040](#) (code cities).

[FN4] See, again, [RCW 7.68.020\(2\)](#), supra.

[FN5] Accord, State ex rel. Ralston v. Dept. of Licensing, supra.

[FN6] See, [Wash. Const., Art. I, § 23](#) which reads:

"No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed."

[FN7] In addition, an ex post facto argument could only be raised, in any event, by an individual who actually has had imposed upon him penalties and assessments the total of which would exceed the maximum sanction provided by law at the time of the act giving rise to the criminal charge.

[FN8] The statutory reference is to a "juvenile offense disposition." The term "disposition" is not specifically defined in the juvenile code (chapter 13.40 RCW) but we note that it is consistently used in that law only in the context of an adjudicated offender--rather than one who is in the diversion process. See, e.g., [RCW 13.40.080](#), .130, .150, .160, .180 and .190.

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